§ 12. Time Limits on Ratification

Beginning with what became the 18th amendment, Congress has generally imposed a time limit on the period for State ratification of a proposed amendment. The customary time limit is seven years from the date of the submission of the proposed amendment to the States by Congress. Initially, these time limitations were made part of the text of the proposed amendment.(1) In recent practice, the limitation has been made part of the text of the joint resolution preceding the text of the proposed amendment, rather than part of the text of the amendment. In one case, a simple majority in both Houses extended the limitation when it was contained in the joint resolution rather than the amendment itself.(2) In the case of the 27th amendment, the ratification of which spanned an unusually long interval, each House of Congress separately declared the amendment duly ratified.(3)

§ 12.1 A proposed amendment to the Constitution may contain a limit on the period for State ratification.

The 18th amendment was submitted to the States with the following limitation on ratification:

> Section 3. This article shall be inoperative unless it shall have been ratified as an amendment to the Constitution by the legislatures of the several States, as provided in the Constitution, within seven years from the date of the submission hereof to the States by the Congress.

§ 12.2 Congress may include a limitation on the time for State ratification of a proposed amendment to the Constitution in the joint resolution proposing the amendment rather than in the body of the amendment itself.

Rather than including a period for State ratification in the text of a proposed constitutional amendment itself, Congress may set forth such a limitation in the text of the joint resolution proposing such amendment. An example of this form of limitation on a ratification period was included in S.J. Res. 7 of the 92d Congress, which was considered by the House on Mar. 23, 1971,(1) and which became the 26th amendment. That resolution read as follows:

1. See *e.g.,* U. S. Const. Amend. 18 § 3.
2. See § 12.3, *infra.*
3. See § 12.4, *infra.*

1. See 117 CONG. REC. 7570, 92d Cong. 1st Sess.

S.J. RES. 7

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

"ARTICLE ——

"SECTION 1. The right of citizens of the United States, who are eighteen years of age or older, to vote shall not be denied or abridged by the United States or by any State on account of age.

"SEC. 2. The Congress shall have power to enforce this article by appropriate legislation.

§ 12.3 The House by majority vote passed a joint resolution extending the ratification period for a constitutional amendment previously submitted to the States.

A proposed constitutional amendment regarding equal rights on account of sex was submitted to the States on Mar. 22, 1972,[1] upon the passage by the Senate of H.J. Res. 208 of the 92d Congress by the requisite two-thirds majority. That joint resolution included in its text a seven-year ratification limitation preceding the text of the proposed amendment. The text of the joint resolution was as follows:

H.J. RES. 208

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an amendment to the Constitution of the United States, which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within seven years from the date of its submission by the Congress:

"ARTICLE ——

"SECTION 1. Equality of rights under the law shall not be denied or abridged by the United States or by any State on account of sex.

"SEC. 2. The Congress shall have the power to enforce, by appropriate legislation, the provisions of this article.

"SEC. 3. This amendment shall take effect two years after the date of ratification."

During 1978, with the ratification deadline for the proposed amendment approaching and with fewer than the requisite number of States having ratified the proposed amendment, Congress considered various proposals to extend the ratification period. On

1. 118 CONG. REC. 9598, 92d Cong. 2d Sess. The House had passed the joint resolution by the requisite two-thirds majority and transmitted it to the Senate on Oct. 12, 1971. 117 CONG. REC. 35815, 92d Cong. 1st Sess.

Aug. 15, 1978,[2] the House considered a joint resolution to extend[3] the ratification period. Before the joint resolution was considered, the House considered, and laid on the table, a resolution considered as a question of the privileges of the House declaring that a two-thirds vote was necessary to pass the joint resolution extending the ratification period. The House then passed the joint resolution by majority vote.

The proceedings were as follows:

> Mr. [James] QUILLEN [of Tennessee]. Mr. Speaker, I rise to a question of the privileges of the House and offer a privileged resolution (H. Res. 1315) involving a question of the privileges of the House, and I ask for its immediate consideration.

After holding that the resolution did present a question of the privileges of the House under Rule IX, the Speaker, Thomas P. O'Neill, Jr., of Massachusetts, directed the Clerk to report the resolution. The resolution was as follows:

> H. RES. 1315
>
> Whereas H.J. Res. 638 of this Congress amends H.J. Res. 208 of the 92nd Congress, proposing an amendment to the Constitution;
>
> Whereas H.J. Res. 208 of the 92nd Congress was passed by an affirmative vote of two-thirds of the Members present and voting, as required by Article V of the Constitution, and submitted for ratification on March 22, 1972;
>
> Whereas the integrity of the process by which the House considers changes to H.J. Res. 208 of the 92nd Congress would be violated if H.J. Res. 638 were passed by a simple majority of the Members present and voting;
>
> Whereas the constitutional prerogatives of the House to propose amendments to the Constitution and to impose necessary conditions thereto in accordance with Article V of the Constitution would be abrogated if H.J. Res. 638 were passed by a simple majority of the Members present and voting;
>
> *Resolved,* That an affirmative vote of two-thirds of the Members present and voting, a quorum being present, shall be required on final passage of H.J. Res. 638.

The privileged resolution was laid on the table. The House then resolved itself into the Committee of the Whole to consider H.J. Res. 638. The joint resolution read as follows:[4]

> *Resolved by the Senate and House of Representatives of the United States of*

2. 124 CONG. REC. 26203, 26204, 26239, 26265, 95th Cong. 2d Sess.

3. *Parliamentarian's Note:* Rule XIII clause 3 (the Ramseyer Rule), does not apply to a joint resolution extending the period for State ratification when the joint resolution does not specifically, by amendment, change the text of the ratification deadline in the joint resolution by which Congress submitted the amendment to the States but rather extends the period by a superseding provision. *Id.* at p. 26204.

4. *Id.* at p. 26239.

America in Congress assembled, That notwithstanding any provision of House Joint Resolution 208 of the Ninety-second Congress, second session, to the contrary, the article of amendment proposed to the States in such joint resolution shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States within fourteen years from the date of the submission by the Congress to the States of such proposed article of amendment.

After debate and adoption of an amendment striking the matter beginning "within fourteen years" and all that follows and inserting "not later than June 30, 1982.", the House passed the joint resolution by a simple majority vote.[5]

§ 12.4 The House adopted a concurrent resolution declaring the ratification of a constitutional amendment.

On Sept. 25, 1789[1], the First Congress submitted to the States for ratification 12 proposed amendments. Of those 12, 10 were ratified by Dec. 15, 1791[2], and became the Bill of Rights. These amendments were proposed without a deadline for ratification, and the remaining two remained pending before the States. In May of 1992, one of those proposed amendments, to limit the power of Congress to increase the salaries of its Members, was ratified by the 38th State (the number of States needed to constitute ratification by the requisite three-fourths of the States) and on May 18, 1992, was declared by the Archivist of the United States to have been ratified. In light of the unprecedented period of time between submission of the amendment to the States and the ratification by the final State necessary for adoption of the amendment, and in order to quell speculation over the efficacy of a ratification process spanning two centuries, the House adopted[3] a concurrent resolution[4] declaring the ratification of the amendment. The concurrent resolution read as follows:

5. After passage by the Senate, the joint resolution was signed by the President but not assigned a public law number. Upon receipt of the joint resolution, the Archivist notified the States of its passage.

1. S. Jour. Vol. 1, p. 88, 1st Cong. 1st Sess.

2. See § 10.1, *supra*.

3. 138 CONG. REC. 12051, 102d Cong. 2d Sess., May 20, 1992. The concurrent resolution was debated on the preceding day, May 19, 1992, *Id.* at pp. 11779–85.

4. The concurrent resolution was considered under suspension of the rules. The House had previously considered by unanimous consent a similar measure declaring the 14th Amendment ratified. See H. Jour. 1126, 1127, 40th Cong. 2d Sess., July 21, 1868.

H. CON. RES. 320

Resolved by the House of Representatives (the Senate concurring), That Congress declares that the proposed article of amendment providing as follows:

> "No law, varying the compensation for the services of the Senators and Representatives, shall take effect, until an election of Representatives shall have intervened."

has been ratified by a sufficient number of the States and has become a part of the Constitution.

On the same day, the Senate adopted both a simple and a concurrent resolution to the same effect.[3] Neither body acted on the measure ot the other.[4]

3. S. Res. 298, and S. Con. Res. 120 of the 102d Cong., at 138 CONG. REC. 11869, 11870, 102d Cong. 2d Sess., May 20, 1992. The Senate adopted the two resolutions by a single, en bloc vote of 99–0. Earlier, the Senate had adopted a resolution requesting the Archivist to transmit to the Senate a list of States having ratified the amendment. S. Res. 295, at 138 CONG. REC. 11010, 102d Cong. 2d Sess., May 12, 1992.

4. For Supreme Court decisions relevant to the ratification process generally, see *Dillon* v. *Gloss,* 256 U.S. 368 (1921) (ratification must be within a reasonable time after proposal); *Coleman* v. *Miller,* 307 U.S. 433 (1939) (efficacy of State ratification of proposed amendments is a political question upon which Congress must make the final determination).